

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

THE PRECINCT, INC.
an Ohio Corporation,

Plaintiff,

vs.

Cause No. 4:13-CV-02391

MWS, LLC, a Missouri Limited Liability Co.,

Defendant.

JURY TRIAL DEMANDED

VERIFIED MOTION FOR LEAVE TO FILE ANSWER OUT OF TIME

COMES NOW Defendant, MWS, LLC, by and through its attorney, John J. Pawloski of The Law Office of John J. Pawloski, LLC and states in support of its Verified Motion for Leave to File Answer to Plaintiff's Complaint Out of Time states as follows:

1. Plaintiff has filed suit alleging statutory and common law trademark violations.
2. This Court denied Defendant's Motion to Dismiss on March 26, 2014.
3. Defendant's answer was filed with this Court on or about April 22, 2014, along with a Motion for Leave to File same out of Time.
4. Counsel for Defendant, a solo attorney, failed to file a timely answer in this cause due to the press of other business, including being called out to trial in St. Louis County in the Cause of Stephen Abbington v. Village of Bel-Ridge, et al., in Division 20, Cause No. 12SL-CC03847 on April 14-16, 2014; the filing of an appellate brief in the case of Chisholm v. Vantage Credit Union with the Missouri Court of Appeals, Eastern District in Cause ED Appl. No. 100333; as

well as working on a response to multiple motions and court appearances, including a Response to Summary Judgment in the case of Jefferey Waters v. City of Grafton, Cause No. 1122-CC-8688 in Division 2 of the Circuit Court of the City of St. Louis.

5. Due to the press of the other business outlined above, Counsel for Defendant was unable to finalize an Answer to this cause within the time provided by Rule.

6. Further, due to the press of other business, Counsel for Defendant failed to research the time period prescribed for filing a responsive pleading after the ruling of a Motion to Dismiss, mistakenly believing that he had 30 days to file a responsive pleading, and was not aware of the 14 day deadline until after Plaintiff had filed a Motion for a Default Judgment.

7. Pursuant to Federal Rule of Civil Procedure 6(b)(B), Defendant moves this Court for leave to file its Answer to the Complaint out of time on the basis of excusable neglect.

8. As the U.S. Supreme Court has noted, "it is clear that 'excusable neglect' under Rule 6(b) is a somewhat 'elastic concept' and is not limited strictly to omissions caused by circumstances beyond the control of the movant." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*

Partnership, 507 U.S. 380, 392 (1993) (footnote omitted).

9. The determination of whether the party's neglect is "excusable" is ultimately an equitable one, taking account of all relevant circumstances surrounding the party's omission. *Kucik v.*

Yamaha Motor Corp., 2009 U.S. Dist. LEXIS 96704 (N.D. Ind. Oct. 16, 2009).

10. Those factors include evaluating the danger of prejudice to the non-moving party, the length of delay and its potential impact on the court's proceedings, the reason for the delay, including whether the delay was in the movant's control, and whether the movant acted in good faith. *Id.*

10. There is no demonstrable prejudice to Plaintiff on account of the request for leave.

11. The length of the delay will have minimal impact on the Court's proceedings as the Court has not yet set this matter for a discovery schedule and/or trial.
12. There is no demonstration that the undersigned acted in anything other than good faith.
13. Balancing the equities, Defendant respectfully moves this Court for Leave to file its Answer, set forth as Exhibit A out of time.
14. Defendant moves this Court for such other terms and conditions as this Court deems reasonable and equitable under the circumstances.

Respectfully Submitted,

/s/ John J. Pawloski

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Certificate of Service

The undersigned does hereby certify pursuant to the Federal Rules of Civil Procedure and local rules of Court that a true and correct copy of the foregoing was provided to the counsel of record on this 9th day of May, 2014 via the Court's electronic filing system to the following:

Mr. Michael R. Annis
Husch Blackwell, LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
(314) 480-1500
(314) 480-1505 (fax)

/s/ John J. Pawloski

AFFIDAVIT OF JOHN J. PAWLOSKI, ESQ.

I have read the foregoing document, and first being duly sworn upon my oath, I declare, subject to the penalties of perjury of the Law of the United States (as provided by 18 U.S.C. Section 1746) that the foregoing statements are true and correct.

/s/ John J. Pawloski

May 9, 2014

Date: _____

John J. Pawloski